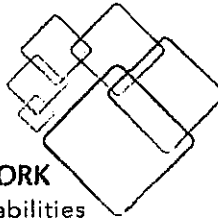


NATIONAL
DISABILITY RIGHTS

NETWORK

Protection & Advocacy for Individuals with Disabilities



November 10, 2005

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Via Electronic Filing at www.regulations.gov

Re: Comments to Notice of Proposed Rulemaking, Closed Captioning of Video Programming, CG Docket No. 05-231, FCC 05-142

Dear Sir or Madam:

The National Disability Rights Network, Inc. and the Disability Law Center (of Utah) submit these joint comments in the above proposed rulemaking. The National Disability Rights Network (NDRN), formerly the National Association of Protection and Advocacy Systems, Inc. (NAPAS), is the voluntary membership organization for the nationwide system of Protection and Advocacy (P&A) agencies. Located in all 50 states, the District of Columbia, Puerto Rico, and the federal territories, the P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. The Disability Law Center (DLC) is the Protection and Advocacy program in Utah.

The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities. The P&As provide information, referral, technical assistance and legal representation to persons with a broad range of disabilities throughout the United States. In 2004, the P&As provided legal assistance to over 2400 individuals who are deaf or hard of hearing. The Utah Disability Law Center provided assistance to 55 individuals who are deaf or hard of hearing, from 2004 until present.

NDRN and DLC thank the FCC for its favorable response to the Petition for Rulemaking filed by Telecommunications for the Deaf, Inc., the National Association for the Deaf, Self Help for Hard of Hearing People, Inc, the Association of Late Deafened Adults and the Deaf and Hard of Hearing Consumer Advocacy Network.

These comments will focus primarily on the need for the Commission's regulations to establish non-technical standards for closed captioning and also to urge the Commission to require monitoring of captioning and reporting of compliance and simplifying the complaint procedure for members of the public by requiring contact information on websites.

The tremendous destruction brought about by the recent hurricanes on the Gulf Coast and the resultant uprooting and relocation of people to different parts of the

country highlights the need for accessible and accurate information on video programming for deaf and hard of hearing Americans. Complete and accurate information ranging from weather forecasts, to weather alerts and warnings, evacuation orders and return and recovery programs are critical to all people and that information must be made accessible for people who are deaf and hard of hearing.

The Commission's current regulation, 47 C.F.R. 79.2 already mandates the accessibility of programming providing emergency information intended to further the protection of life, health, safety and property.

However, video programmers do not consistently comply with that requirement. The following examples come from the Disability Law Center in Utah. On Wednesday, February 9, 2005, a butane tanker truck exploded on a major highway in Utah at about 6 PM that night. Over 1,500 residents within a one-mile radius were evacuated and the highway was closed. Individuals who are deaf or hard of hearing report that the evacuation information was not captioned on local television stations. In Sept. 2003, a prescribed fire near Cascade Springs on the Uinta National Forest went out of control, resulting in a wildfire that sent smoke into the Salt Lake City-Provo area for a week. A person who was deaf reports that on the first day she saw the dense smoke and wondered where the fire was and if it was safe to drive across the valley. She turned on the news (it was noon, so there was news on several stations). The news program had pictures of the smoke, but she could learn nothing because the mid-day news reports were not captioned. On the evening news, which was captioned, the news program reported on the origin of the smoke but she was not able to get that information on the midday news reports.

In addition, for some emergency situations such as hurricanes, much of the information that people need to prepare will be broadcast in the days prior to the immediate emergency and thus may not be covered by 47 C.F.R. 79.2. After a storm or similar emergency has passed, people will also need information about what services and assistance is available. The broadcast information both before and after the current emergency situation needs to be accessible, complete and accurate.

The current Commission regulations have no standards for non-technical quality aspects of closed captioning, such as accuracy of transcription, spelling, grammar, punctuation, placement, styles and type font. The current state of closed captioning of news programming is far from perfect and inaccurate transcription could put people who are deaf or hard of hearing in danger.

NDRN and DLC urge the Commission to promulgate regulations establishing strong standards requiring that the transcription of closed captioning be accurate. It is particularly important that closed captioning of news programming and other public information programming be free of errors so that people with hearing impairments have an equal opportunity to be informed.

While the current regulation, 47 CFR 79.2(B)(3) requires video programmers to ensure that, "(i) Emergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other

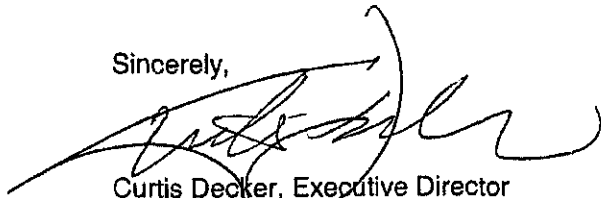
than closed captioning; and (ii) Emergency information should not block any video description and any video description provided should not block any emergency information provided by means other than video description," anecdotal evidence suggests that programming distributors fail to ensure that the regulatory requirement is met. Therefore, in addition to establishing quality standards, NDRN and DLC urge the Commission to strengthen its enforcement of the requirements of 47 CFR 79.2(B)(3).

One way to help improve compliance of all captioning requirements would be for the Commission to adopt regulations requiring video programming distributors to monitor captioning to make sure the equipment is working properly and to file periodic compliance reports to the Commission. NDRN and DLC support requiring programming distributors to monitor captioning and provide periodic compliance reports to the Commission to make distributors more aware of their obligations and will help correct captioning problems in a timely manner.

Finally, NDRN and DLC urge the Commission to require video programming distributors to post *and update complete contact information on their websites* and provide that information to the Commission. Posting such information on websites is standard operating procedure for virtually all large companies doing business with the public and will make it easier for people who are deaf or hard of hearing who have internet access to make their concerns known.

If you have any questions or concerns about our comments, please feel free to contact Kenneth Shiotani at 202-408-9514 x126 or via email at Kenneth.Shiotani@ndrn.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Curtis Decker', with a large, sweeping flourish extending from the end of the signature.

Curtis Decker, Executive Director
The National Disability Rights Network, Inc. &
Fraser Nelson, Executive Director,
Disability Law Center